

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:

Industrial Zinc Plating Site,
3200 East 29th Street,
Long Beach, California

Industrial Zinc Platers, Inc.,

Raymond Ball,

and

Islander Extremes, Inc.,

Respondents

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region
CERCLA
Docket No. 9-2005-17

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by a delegation dated November 16, 2001.

2. This Order pertains to property located at 3200 East 29th Street, Long Beach, Los Angeles County, California 90806, the "Industrial Zinc Site" or the "Site." This Order requires the Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of California of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and Respondents' heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

5. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

6. Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Paragraphs 22 and 23, Access to Property and Information.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Days" shall mean consecutive calendar days unless expressly stated otherwise.

b. "Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S.C. § 9601, et seq.

d. "Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2005-17.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

g. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

h. "Response Action" shall be those specific work items Respondents are required to perform at the Site pursuant to this Order.

i. "Respondents" shall mean, both individually and collectively, Industrial Zinc Platers, Inc., Raymond Ball, and Islander Extremes, Inc.

j. "Section" shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

k. "Site" shall mean the former Industrial Zinc Platers, Inc., facility located at 3200 East 29th Street, Long Beach, Los Angeles County, California 90014.

l. "State" shall mean the State of California, and all of its political subdivisions.

m. "United States" shall mean the United States of America.

IV. FINDINGS OF FACT

8. The address for the Industrial Zinc Site is 3200 East 29th Street, Long Beach, Los Angeles County, California 90806. The Site is located on approximately two acres of land in an industrial/commercial area of Long Beach, California. The Site lies immediately south of the San Diego (405) Freeway and under one-quarter of a mile south of the Long Beach Municipal Airport. The Site consists of one 19,200 square foot building with an address of 3200 East 29th Street, hereinafter referred to as the north building, and one 9,600 square foot building with addresses 3202-3208 East 29th Street, hereinafter referred to as the south building. The two site buildings are surrounded by asphalt and concrete paved driveways with parking lots along 29th Street and between the two Site buildings

a. The Site property is currently owned by Islander Extremes, Inc. Brian Gooldy is the president of Islander Extremes, Inc.

b. Industrial Zinc Platers, Inc., and Mr. Raymond Ball, president of Industrial Zinc Platers, Inc., were operators at the Site from 1967 until October 2004. Operations included electroplating, plating, polishing, anodizing and coloring operations. The facility's primary operation was zinc cyanide electroplating on iron substances. Industrial Zinc Platers, Inc., was also the owner of the Site from 1967 to November 2003.

c. In April 1995, a Phase I and Focused Phase II Environmental Assessment of the Site property prepared by Ralph Stone and Company, Inc., documented soil sampling results in a portion of the plating area, near the clarifier, sumps, and dip tanks on the eastern end of the plating line. Zinc, lead and cyanide were detected in shallow soils in sampled areas.

d. In January 27, 2003, a Subsurface Investigations Report of Findings was prepared by The Leu Group and Blakely Environmental Investigations, Inc., regarding the Site property. In this report, core borings were taken within the northern building which houses the various plating bath and rinse tanks and soil borings were taken south of the southern building where Industrial Zinc Platers, Inc., dried plating sludge cake directly on the ground. These samples indicate elevated levels of selenium, arsenic, barium, copper, lead, molybdenum, selenium and zinc.

e. On June 10, 2005, the Los Angeles County Sanitation Districts ("LACSD") referred the Site to the Los Angeles County Fire Department and requested EPA's assistance. On June 20, 2005, EPA's On Scene Coordinator ("OSC") conducted an inspection with LACSD. The inspection revealed a large quantity of liquid and solid hazardous waste streams including plating solutions, sludges and untreated industrial wastewaters abandoned by Industrial Zinc Platers, Inc.

f. Hazardous materials are located in several areas on-site including a tank farm along the eastern side of the south building, the former wastewater treatment area in the parking lot separating the two buildings, and large decayed and partially buried steel and reinforced concrete vats in the eastern half of the north building.

g. The main zinc plating line in the north building contains eleven tanks ranging in size from 3,600 to 8,425 gallons. Approximately 20,000 gallons of solutions and sludges are contained within these tanks. In addition, approximately 20,000 gallons of solutions and sludges are estimated to be contained in above-ground storage tanks, 55-gallon drums and salvage drums across the property. An undetermined volume of contaminated containment concrete, building materials, debris and soils also exist at the Site.

h. Large quantities of acidic and strong cyanide laden plating solutions and wastes in open and degraded vats were found at the Site. Unmanaged and unsecured heavy metal solutions, sludge and debris containing chromium, copper, cadmium, arsenic and zinc are deposited throughout the building, in Site soils and building materials.

i. Over 45 various sized drums, tanks, vats and clarifiers located on site are in very poor condition and improperly utilized, marked and labeled. Tanks were found leaking and plating bath residues and wastewater treatment sludges were found spilled outside of their containment.

j. On June 20, 2005, EPA's OSC gave verbal notice to Islander Extremes, Inc., of its potential liability at the Site under CERCLA through the company's president Brian Gooldy.

k. On June 21, 2005, EPA collected over 25 samples from plating vat solutions, above-ground storage tanks, 55-gallon drums and salvage drums. Sampling results indicate the presence of elevated levels of cyanide, zinc, copper, arsenic, chromium and cadmium. These materials are hazardous substances under section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

l. On June 22, 2005, EPA's OSC initiated an emergency stabilization and cleanup action under section 106 of CERCLA, 42 U.S.C. § 9606, to secure the Site.

m. On July 6, 2005, the State of California requested assistance from EPA's Emergency Removal Section by conducting a time critical removal at the Site.

n. Based on EPA's June 20-21, 2005, inspection of the Site, EPA has determined that conditions at the Site may present an imminent and substantial endangerment to human health and environment. Direct contact, inhalation and ingestion of the hazardous substances located at the Site pose a human health threat.

o. The administrative record supporting this action is available for review at the EPA Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Industrial Zinc Plating Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminants found at the Site, including, but not limited to, cyanide, zinc, copper, arsenic, chromium and cadmium, are "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondent Industrial Zinc Platers, Inc., and Raymond Ball were the "operators" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

f. Respondent Industrial Zinc Platers, Inc., was the "owner" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

g. Respondent Islander Extremes, Inc., is the "owner" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

h. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

i. The conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b).

j. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

k. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

VI. ORDER

10. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondents comply with the following provisions, including, but not limited to, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

11. Notice of Intent to Comply

Each Respondent shall notify EPA OSC Craig Benson within 24 hours after the Effective Date of this Order of Respondent's irrevocable intent to comply with this Order. The Notice of Intent to Comply may be given verbally but shall be followed by written confirmation. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

12. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall retain a contractor qualified to perform the removal action. Respondents shall notify EPA of the name and qualifications of such contractor within two (2) business days of the Effective Date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least one (1) day prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within one (1) business day following EPA's disapproval.

13. Within two (2) business days after the Effective Date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within one (1) business day following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

14. The EPA has designated Craig Benson of the Region 9 Emergency Response Section as its OSC. Respondents shall direct all submissions required by this Order to the OSC at:

Craig Benson, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9
2250 Obispo Avenue, Suite 101
Signal Hill, CA 90755
(562) 986-6130
(562) 889-1630 (cell)
benson.craig@epa.gov

15. Work to be Performed

Respondents shall immediately restrict access to the Site and, for the duration of the response action required by this Order, Respondents shall not allow any materials, equipment, or any other personal property to be removed from or brought into the facility at the Site without prior EPA approval.

16. Within five (5) days after the Effective Date of this Order, Respondents shall submit to EPA for approval, a Work Plan for the removal of hazardous substances from the Site. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan shall comply with the guidelines for preparation provided in Paragraph 18, below, and at a minimum, shall require the Respondents to perform and complete the following removal activities within sixty (60) days after EPA approves the Work Plan pursuant to Paragraph 18 of this Order.

a. Identify all chemical compounds in all vats and other containers, including sampling and analysis of unknown chemicals and all chemicals in containers without marks or labels or with unreadable marks or labels. Characterize any readily accessible grossly contaminated equipment, structures, and debris for proper disposal or other disposition;

b. Segregate all hazardous substances to ensure incompatible substances pose no threat of violent reaction, fire, or explosion; remove non-hazardous chemicals to the appropriate solid waste disposal facility, recycling facility or return to distributor/manufacturer. All hazardous substances that are salable product must be segregated and stored in a proper manner consistent with reasonable commercial practices;

c. Properly containerize into United Nations specification packaging, transport and dispose in accordance with all applicable or appropriate regulations, all hazardous substances at the Site or, where feasible, implement alternative treatment or reuse/recycling options. Each transfer of hazardous substances, pollutants or contaminants off-Site must be consistent with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA procedures for planning and implementing off-Site Response Actions established at 40 C.F.R. § 300.440.

d. Perform air monitoring and sampling in accordance with Occupational Safety and Health Administration ("OSHA") regulations during appropriate phases of the removal action, especially when there is a potential for airborne releases of toxic air contaminants. Use operational controls such as dust containment or suppression to abate fugitive dust emissions.

The project Health and Safety Plan meeting OSHA's criteria at 29 C.F.R. § 1910.120 must be maintained at the Site during all phases of the response;

e. Within five (5) days after the conclusion of work described in sub-paragraphs a. through d. above, Respondents shall submit to EPA for approval, a sampling and remediation plan to determine the extent of soil contamination beneath and adjacent to plating areas, treatment areas, and any other sensitive areas identified throughout the course of work, and to provide the process for excavation and removal of identified soils. At a minimum, soil sampling shall characterize the zone extending between the surface and not exceeding five (5) feet below ground surface, except as may be deemed necessary by EPA to control exposures to high contaminant concentrations;

f. Dispose of, stabilize, or treat grossly contaminated soils found at or near the surface at the direction of the OSC and pursuant to the plan developed and approved as directed in sub-paragraph e, above;

g. Provide EPA with copies of all documentation related to off-Site disposal or other disposition of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.

17. Financial Assurances

Within three (3) days of the Effective Date of this Order, the Respondents shall provide EPA with documentation that adequately demonstrates their financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondents' contractor that it will complete the work to be performed, a letter of credit from a financial institution, or an escrow account for the value of the work to be performed.

18. The Work Plan required in Paragraph 16 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondents shall prepare the Work Plan elements to satisfy Paragraph 16.e. as a separate document for approval. Once approved, each element of the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement the Work Plan as finally approved by the EPA. In addition to the requirements listed in Paragraph 16, the Work Plan shall include:

a. A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current OSHA regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the Health & Safety Plan recommended by EPA and implement the Health & Safety Plan throughout the performance of the removal action; and

b. A Quality Assurance Project Plan ("QAPP") that is consistent with EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4). Soil sampling

activities shall utilize proper soil assessment techniques as defined in EPA Document SW-846, Chapter 9 (EPA Environmental Response Team Standard Operating Procedures) or appropriate ASTM standards.

19. Final Report

Respondents shall provide EPA with a written report on completion of the transportation of hazardous substances or wastes for disposal or recycling. This report should contain a summary of the activities to comply with this Order. Within fifteen (15) days after completing the Response Action, Respondents shall provide EPA with this final summary report, which also shall include all invoices submitted by contractors (which shall identify specific work performed), and copies of all analytical data generated during the response action.

20. All documents, including technical reports, and other correspondence to be submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Craig Benson, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9
2250 Obispo Avenue, Suite 101
Signal Hill, CA 90755
(562) 986-6130
(562) 889-1630 (cell)
benson.craig@epa.gov

Respondents shall submit two (2) copies of each document to EPA.

21. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA not less than two (2) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

22. Access to Property and Information

Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents' contractors or on the Respondents' behalf during implementation of this Order.

23. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

24. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for four years following completion of the removal actions required by this Order. At the end of this four year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the four year period at the written request of EPA.

25. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

26. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Procedures for planning and implementing off-site response actions," promulgated at 40 C.F.R. Part 300.440.

27. Compliance with Other Laws

Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

28. Emergency Response and Notification of Releases

If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC of the incident or site

conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

29. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA Region 9 Emergency Response Center at (800) 300-2193 or the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11001, et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

30. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

31. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, two (2) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

32. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

33. Respondents shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by

cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Attention: Region 9 Receivables
Preservation Aviation Site
P.O. Box 371099M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Industrial Zinc Plating Site by name and make reference to this Order, including the EPA docket number stated above. Respondents shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

34. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

35. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

XI. OTHER CLAIMS

36. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

37. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

38. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including, but not limited to, any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XII. MODIFICATIONS

39. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within three (3) days of discovery of the unanticipated or changed circumstances.

40. EPA may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraph 39. Where consistent with section 106(a) of CERCLA, EPA may direct, as an amendment to this Order, that Respondents perform these tasks in addition to those required herein. Respondents shall implement the additional tasks that EPA identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by EPA in any modifications to this Order.

41. Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing soon thereafter; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction.

42. If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

43. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XIII. DELAY IN PERFORMANCE

44. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

45. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

46. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

XIV. NOTICE OF COMPLETION

47. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XV. ACCESS TO ADMINISTRATIVE RECORD

48. The Administrative Record supporting these removal actions is available for review at EPA's Superfund Records Center located at 75 Hawthorne Street, San Francisco, California, and may be contacted at (415) 536-2000.

XVI. OPPORTUNITY TO CONFER

49. Within three (3) days after EPA signs this Order, Respondents may request a conference with EPA. Any such conference shall be held within two (2) days after the request unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

50. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within two (2) days after the Effective Date of this Order. This conference is not an evidentiary hearing, does not constitute a

proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Thanne Cox, Assistant Regional Counsel, at the following address:

Thanne Cox
US EPA
Office of Regional Counsel (ORC-3)
75 Hawthorne Street
San Francisco, California 94105
415-972-3908
cox.clizabeth@epa.gov

XVII. INSURANCE

51. Respondents shall submit to EPA a certification that Respondents or their contractor and subcontractor have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional insured on any such insurance policies.

XVIII. SEVERABILITY

52. If a court issues an order that invalidates any provision of this Order or finds that Respondents has sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XIX. EFFECTIVE DATE

53. This Order shall be effective three (3) days after the Order is signed by the Response, Planning and Assessment Branch Chief, unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second day following the day of such conference unless modified in writing by EPA.

Unilateral Administrative Order 9-2005-17
IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: 

Date: 7/7/05

Kathryn Lawrence
Acting Branch Chief
Response, Planning and Assessment Branch
EPA, Region 9

EFFECTIVE DATE: July 10, 2005

EPA Region 9 Contacts:

Craig Benson, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9
2250 Obispo Avenue, Suite 101
Signal Hill, CA 90755
(562) 986-6130
(562) 889-1630 (cell)
benson.craig@epa.gov

Thanne Cox, Assistant Regional Counsel
Office of Regional Counsel, RC
EPA, Region 9
75 Hawthorne Street
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(415) 972-3908

John Jaros, Civil Investigator
Emergency Response Section, SFD-9-2
EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3058

APPENDIX A
Unilateral Administrative Order 9-2005-17
Industrial Zinc Site

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Long Beach, CA 90806

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